

# WHO'S IN CHARGE HERE ANYWAY?

By David L. Church

This is the most frequently asked question in the smaller cities and towns. When new mayors are elected everyone wants to know what the mayor can do and how to stop him or her if he or she tries. In smaller Utah cities and towns there is no easy answer to this question.

Unless your city or town is organized under one of two optional forms of government (some times called alternative forms) you have what is called the traditional form or council form of government. The two principal optional forms are the council-mayor optional form (strong mayor) and the city- manager optional form. You can tell whether your city or town is under one of the optional forms by determining if the citizens have ever successfully held a special election to change the form of government. This section does not apply to administration in the optional form cities or towns. The subject is discussed in the section devoted specifically to the optional forms.

In the traditional form of government it is government by committee. The committee is called the "governing body." In a third fourth and fifth class city the governing body is a council of six members one of whom is the mayor<sup>1</sup>. In a town the governing body is a council of five members one of who is the mayor<sup>2</sup>. The governing body holds all of the legislative and executive power of the municipality. The mayor is a member of the governing body<sup>3</sup>. The mayor chairs the body and presides at all its meetings<sup>4</sup>. The mayor also votes as a member of the governing body. In third class cities the mayor votes only in cases of tie votes and on the hiring or firing of a city manager. In towns the mayor can always vote<sup>5</sup>.

The concept of governing body creates confusion about who runs the day to day affairs of the city or town. This confusion is compounded by the Utah legislature's reference to "legislative body" in the Utah code. The administrative powers and duties in a third class city or town, by state statute, belong to the mayor<sup>6</sup>. They are not part of the powers of the governing body as a whole. However, the governing body may establish rules and procedures for the administration of the city or town<sup>7</sup> including the powers and duties of all officers and employees

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1 Utah Code section 10-3-105

2 Utah Code section 10-3-106

3 Utah Code section 10-3-101

4 Utah Code section 10-3-403

5 Utah Code section 10-3-401 and 402

6 Utah Code section 10-3-808

7 Utah Code section 10-3-815

of the city or town<sup>8</sup>.

The mayor, as an individual, is given the position of chief executive officer to whom all employees are to report and is to carry out the policy of the governing body<sup>9</sup>. The mayor has the authority to run the day to day operations of the municipality within the general operating guidelines established by the governing body. This, however, is not the final answer to the question of who's in charge.

Many mayors do not have the time, inclination, or talent to administer the city or town by themselves. There are options to solve this problem and they take two general forms. First the mayor may voluntarily give some of the administrative powers to members of the council. No one can require the mayor to make these assignments. It is an option available to the mayor. If the mayor does wish to assign council members to administrative positions the mayor must do so with the advice and consent of the council and the mayor cannot change the administrative assignment without a the concurrence of the majority of the council<sup>10</sup>. The general administrative powers of these council members and the system of administration changes from municipality to municipality. It is usually established by tradition and is not written down in any ordinance or resolution. This method of administering cities and towns is still the most common method in the smallest cities and towns which lack staff and employees.

Once a mayor decides to delegate the administrative authority to the council members the mayor loses some control over the administration. The mayor cannot have it both ways. He or she may not both delegate the responsibility and remain in control. If a problem does arise concerning the scope of the powers and duties of these council members/administrators the governing body as a group, which has the statutory authority to establish a general system of administration, decides what each council member/administrator's duties are.

A more difficult problem arises when the mayor either does not want to delegate the administration to the council members or the council members refuses to become administrators. If the council feels that the mayor has the ability to administer the municipality there will be no problem. If the council does not trust the mayor to be able to do the job it has options. It can create and budget for the position of administrative assistant to the mayor and thus enable the mayor to have a professional city administrator's help. If they do this the mayor has sole authority to appoint the administrator<sup>11</sup>.

Councils also have the authority to create the position of city manager and delegate to the manager some or all of the mayor's administrative and executive powers. The council cannot delegate to the manager the mayor's legislative or judicial powers or the chair of the governing

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8 Utah Code section 10-3-813

9 Utah Code section 10-3-809

10 Utah Code sections 10-3-811 and 812.

11 Utah Code section 10-3-818

body<sup>12</sup>. If the council does create the position of city manager it must do so by ordinance and by either ordinance or resolution describe the manager's powers duties. This form of administration is significantly different from the previously discussed administrative assistant to the mayor. First, this takes authority from the mayor, with or without the mayor's cooperation. Second the city manager is not appointed by the mayor but is hired or fired by the governing body. The mayor has a vote on this matter but not power to appoint or a veto<sup>13</sup>. If a council does create this form of administration, the mayor is no longer the chief executive or administrative officer of the city or town. The city manager does not answer to the mayor individually but to the whole council (which includes the mayor). This is the most common form of administration in Utah's larger third class cities.

In Utah third, fourth, fifth class cities and towns (which are not under one of the optional forms of government) a majority of the governing body has ultimate authority to decide how the day to day affairs of the city or town are conducted and who the conductor will be. Whoever has three votes will win every dispute about how to run the city or town. If the council does nothing the mayor, by default, is in charge of all day to day operations. If the mayor wishes, these duties can be shared with individual council members. If the council wishes it can establish the general rules and policies which the mayor carries out. If the council does not act, the mayor is left to his or her own devices. If the job of mayor is too big for the individual elected to be mayor, the council can either get the mayor help or can take the responsibilities from the mayor. If a majority of the council decides to do so, the mayor can be relieved of all his executive and administrative duties and the position of mayor becomes legislative and ceremonial in nature. This is not a decision which the mayor can veto.

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<sup>12</sup> Utah Code section 10-3-830

<sup>13</sup> Utah Code sections 10-3-402 and 404